

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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DELANIE BUTLER, et al.,

Plaintiff(s),

v.

PORTFOLIO RECOVERY ASSOCIATES,
LLC,

Defendant(s).

Case No. 2:20-CV-861 JCM (EJY)

ORDER

Presently before the court is plaintiffs Delanie Butler and John Robinson's (collectively, "plaintiffs") and defendant Portfolio Recovery Associates, LLC's ("defendant") joint response to the court's order to show cause (ECF No. 53). (ECF No. 54).

I. BACKGROUND

On May 12, 2020, plaintiffs pleaded a 29 U.S.C. 2101 WARN Act claim, a 29 U.S.C. 201 FLSA claim, a NRS 608.016 unpaid wages claim, and a NRS 608.018 unpaid overtime claim. (ECF No. 1 at 11–14). Plaintiffs specifically pleaded the FLSA and NRS claims for the hourly worker class members and their class representative, Butler. (ECF No. 1 at ¶¶ 94–113).

On July 31, 2020, pursuant to the parties' stipulation (ECF No. 23), the court severed and transferred the FLSA claim, the NRS unpaid overtime claim, and the NRS unpaid wages claims brought by the hourly employees. (ECF No. 24). However, also pursuant to the parties' stipulation (ECF No. 23), the court specifically retained the WARN Act claim and the NRS unpaid wages claim on behalf of the salaried employees. (ECF No. 24).

After engaging in mediation, the parties filed a joint motion for preliminary approval of class action settlement. (ECF No. 52). Upon review of the proposed settlement agreement, the

1 court found potentially dispositive errors and ordered the parties to show cause as to why the
2 court should not dismiss their joint motion. (ECF No. 53). The parties now file a joint response
3 to that order, proposing changes to remedy the court's concerns with their original motion. (ECF
4 No. 54).

5 **II. DISCUSSION**

6 In its order to show cause, the court identified issues with the parties' proposed
7 settlement agreement concerning commonality, adequacy of representation, and fairness. (ECF
8 No. 53). Fundamental to the court's concerns was the unpled, but specifically retained, claim for
9 unpaid wages on behalf of the salaried employee class members. (*Id.*; *see* ECF Nos. 23, 24).

10 The parties propose several remedies to address the court's concerns. First, the parties
11 propose stipulating to dismiss the unpled, but specifically retained, salaried wage claims without
12 prejudice. (ECF No. 54 at 4–5). Second, the parties propose stipulating to amend the “clerical
13 error” in ECF Nos. 23 and 24 from asserting a claim under Nevada Revised Statute 608.016 to
14 the proper Nevada Revised Statutes, 608.0197 and 608.020. (*Id.* at 5). Third, the parties propose
15 amending their jointly proposed settlement agreement and all attached exhibits to clarify that the
16 class members are releasing only potential WARN act claims, not unpaid salary claims. (*Id.*).
17 Finally, the parties propose amending their jointly proposed settlement agreement and all
18 attached exhibits to better represent the share of the settlement disbursement allocated to salaried
19 employees and hourly employees. (*Id.*).

20 The parties' second proposed stipulation and order amending the severance would
21 remove the unpled salaried employee claims from the docket entirely. Thus, the parties need not
22 specifically dismiss the unpled claims from this matter. Accordingly, the court DENIES the
23 parties' request to dismiss the unpled claims and GRANTS the parties' request for leave to file a
24 stipulation and proposed order amending the “clerical errors” in ECF No. 23 and 24 relating to
25 the salaried employees' unpaid wages claims.

26 The court notes without holding that the parties' proposed amendments to their proposed
27 settlement agreement do address the court's concerns with the agreement. Thus, the court
28 GRANTS the parties' request for leave to amend their joint motion to approve class settlement.

Accordingly,

DATED October 18, 2021.

James C. Mahan
U.S. District Judge